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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

MEDIMMUNE, LLC,

Plaintiff,

v.

PDL BIOPHARMA, INC.,

Defendant.

Case No. CV 08 5590 JF

Action Filed: December 16, 2008

**STIPULATION AND ~~PROPOSED~~
ORDER REGARDING
EXPERT DISCOVERY**

1 IT IS HEREBY STIPULATED AND AGREED by and between Plaintiff
 2 MedImmune, LLC. ("MedImmune") and Defendant, PDL BioPharma, Inc. ("PDL"). (each, a
 3 "Party" and collectively, the "Parties") to the above-captioned litigation (the "Litigation") as
 4 follows:

5 1. The Parties agree to modify the requirements of Rule 26(a)(2)(B) of the
 6 Federal Rule of Civil Procedure with respect to required disclosures concerning any experts
 7 testifying in connection with the Litigation, and to limit the scope of any documents or
 8 information concerning or created by any expert witness retained by any of the Parties in the
 9 Litigation ("Experts") that may be subject to discovery in (a) the Litigation or (b) in any other
 10 proceeding where any person may seek production of documents or information concerning or
 11 created by such Expert in connection with the Litigation ("Other Proceeding").

12 2. Notwithstanding anything to the contrary in Rule 26(a)(2)(B) or any other
 13 law, rule, regulation or court order provided by any federal, state, regulatory, judicial, arbitral,
 14 local or foreign authority, discovery of an Expert shall be limited to the following documents:

- 16 (a) a complete statement of all opinions to be expressed by the Expert, and the basis
 17 and reasons therefore (the "Expert Report");
- 18 (b) any data, materials, or other information on which the Expert relied in forming the
 19 opinions expressed in the Expert Report;
- 20 (c) the identity of any materials pertaining to the dispute made available to the Expert
 21 for review, including but not limited to documents produced in discovery, and
 22 deposition transcripts and exhibits;
- 23 (d) any materials prepared by the Expert that any of the Parties intend to present at
 24 trial or at any other hearing or proceeding in the Litigation;
- 25 (e) a complete statement of the qualifications of the Expert, including a list of all
 26 publications within the preceding ten (10) years;
- 27 (f) a statement of the compensation paid or to be paid to the Expert by the party
 28 sponsoring that Expert in connection with his/her work in the Litigation;
- (g) a listing of any other cases in litigation, or any administrative proceeding, in which
 the Expert has provided an Expert Report, or has testified as an expert at trial or by
 deposition, within the preceding four (4) years;

- 1 (h) to the extent that the expert relies on any testing or data generated for the
2 litigation, all testing and data generated by that expert and, in addition, any testing
3 or data otherwise disclosed to that expert (whether or not relied on by that expert)..

4 3. Notwithstanding anything to the contrary in Fed. R. Civ. P. 26(a)(2)(B) or
5 case law, other than the documents described above in paragraph 2, all other materials pertaining
6 to such Expert (the "Excluded Information") shall NOT be subject to disclosure in connection
7 with the Litigation or any Other Proceeding, including, but not limited to:

- 8 (a) any notes, comments, edits, or drafts of materials, summaries, charts, illustrative
9 documents, exhibits, declarations, affidavits, reports, prepared by the Expert, or
10 any such materials by persons working under their supervision, parties to the
11 Litigation or their counsel, including agents and/or consultants of counsel, except
12 to the extent such materials not prepared by the Expert are relied upon by the
13 Expert in forming his or her opinion;
14 (b) materials or information that may have been reviewed or considered by the Expert,
15 except to the extent such materials or information have been relied upon by the
16 Expert in forming his or her opinion; and
17 (c) all written or oral communications, including, but not limited to, letters, e-mails, or
18 facsimiles between the Expert and any party to this litigation or any in-house or
19 outside counsel, including agents and/or consultants of counsel, for the party or
20 parties on whose behalf the Expert was engaged, except to the extent such
21 communications have been relied upon by the Expert in his or her opinion.

22 4. The Parties agree that Excluded Information shall be considered attorney-
23 work product and subject to the protections from disclosure in the Litigation or in any Other
24 Proceeding as permitted under the Federal Rules of Civil Procedure and the Federal Rules of
25 Evidence.

26 5. The parties agree that there will be no inquiries, at depositions, hearings, or
27 at trial into the existence of or nature of the Excluded Information.

28 6. The terms of this Stipulation and Order shall remain in effect during and
after conclusion of the Litigation.

7. Nothing herein shall limit or waive any party's rights to object for any
reason to the: (a) admission into evidence of any summary, report, affidavit, or testimony from

DATED: July 13, 2009.

WILLIAMS & CONNOLLY LLP

/s/

GERSON A. ZWEIFACH

PAUL B. GAFFNEY

AARON P. MAURER

DAVID I. BERL

Attorneys for Plaintiff

MEDIMMUNE, LLC

DATED: July 13, 2009.

WEIL, GOTSHAL & MANGES LLP

/s/

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PDL BIOPHARMA, INC.

ATTESTATION OF FILER CONCERNING SIGNATURE

In accordance with general Order No. 45, Section X, the filer of this document hereby attests that concurrence in the filing of this document has been obtained from each of the signatories listed above.

DATED: July 13, 2009


HOWARD RICE NEMEROVSKI CANADY FALK &
RABKIN
A Professional Corporation

By: _____ /s/
JEFFREY E. FAUCETTE

Attorneys for Plaintiff
MEDIMMUNE, LLC

~~PROPOSED~~ ORDER
PURSUANT TO STIPULATION,
^ SO ORDERED.

DATED:


~~UNITED STATES DISTRICT COURT~~
~~SOUTHERN DISTRICT OF~~
~~CALIFORNIA~~

Howard R. Lloyd
United States Magistrate Judge